

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

TOMAS NAVARRETTE,

Plaintiff,

v.

5 - KEYS CHARTER SCHOOL, et al.,

Defendants.

Case No. 20-cv-02579-PJH

**ORDER RE: PLEADINGS AND  
PENDING MOTIONS**

Re: Dkt. Nos. 1, 13, 21, 26, 30, 33

On April 14, 2020, plaintiff filed the original complaint in this matter. Dkt. 1. On January 11, 2021, defendant Five Keys Schools and Programs (erroneously named “5 – Keys Charter School”) filed an answer to the original complaint. Dkt. 13. On January 27, 2021, defendant County of Butte (“Butte County”) filed a motion to dismiss, or in the alternative, to transfer. Dkt. 21.

On or before January 20, 2021, the United States Marshals Service (“USMS”) served California State Transportation Agency. Dkt. 22. It appears that the summons issued on November 6, 2020 inadvertently named that agency. However, on February 4, USMS served California Department of Transportation (“CalTrans”), which was named in an amended summons issued on February 5, 2021. Dkt. 27. On February 12, 2021, California State Transportation Agency filed a motion to dismiss the original complaint because it had been erroneously named. Dkt. 33.

On February 4, 2021, plaintiff filed a motion for extension of time to amend his complaint (Dkt. 26) and on February 5, 2021, plaintiff filed a first amended complaint (“amended complaint”) naming CalTrans, among others. Dkt. 30. The motion for

1 extension of time is GRANTED. Dkt. 26. Plaintiff may amend his complaint once as a  
2 matter of course in compliance with Federal Rule of Civil Procedure 15(a)(1)(B). Thus,  
3 plaintiff's amended complaint found at Dkt. 30 serves as the operative pleading in this  
4 case. Accordingly, the court GRANTS the motion to dismiss filed by erroneously named  
5 California State Transportation Agency. Dkt. 33. Although a summons was issued on  
6 February 5, 2021, it is not clear from the docket that CalTrans has been served with the  
7 amended complaint.

8 The answer filed by Five Keys Schools and Programs on January 11, 2021, is  
9 clearly directed at the original complaint which has been superseded by the amended  
10 complaint. Five Keys Schools and Programs may revise its answer or may advise the  
11 court that the answer shall be applied to the amended complaint by March 2, 2021.

12 The motion to dismiss filed by Butte County on January 27, 2021, is clearly  
13 directed at the original complaint which has been superseded by the amended complaint.  
14 Butte County may revise its motion or may advise the court that the motion shall be  
15 applied to the amended complaint by March 2, 2021.

16 Plaintiff's motion to appoint counsel will be resolved by separate order, but not  
17 until plaintiff has contacted the Legal Help Center for free legal advice. The Legal Help  
18 Center is located at the Oakland Courthouse, but can be reached during business hours  
19 by calling 415-782-8982. Information about the Help Center is also available on the  
20 court's website at: <https://cand.uscourts.gov/about/court-programs/legal-help-desks/>.

21 **IT IS SO ORDERED.**

22 Dated: February 16, 2021

23 /s/ Phyllis J. Hamilton  
24 PHYLLIS J. HAMILTON  
25 United States District Judge  
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